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02 OCT 2006

In re Application of :
Kogel et al. :
Application No.: 10/522,106 :
PCT No.: PCT/EP03/07589 :
Int. Filing Date: 14 July 2003 :
Priority Date: 22 July 2002 :
Attorney Docket No.: 12810-00067-US :
For: Method For Obtaining Pathogenic :
Resistance In Plants :

DECISION
ON
PETITION

This is in response to the "Request For Withdrawal As Attorney Or Agent And Change Of Correspondence Address" filed on 25 February 2005.

BACKGROUND

This international application was filed on 14 July 2003, claimed an earliest priority date of 22 July 2002, and designated the U.S. The International Bureau communicated a copy of the published international application to the USPTO on 29 January 2004. The 30 month time period for paying the basic national fee in the United States expired at midnight on 24 January 2005 (since 22 January 2005 was a Saturday). Applicants filed, *inter alia*, the basic national fee on 24 January 2005.

DISCUSSION

Counsel requests withdrawal of himself personally and on behalf of "the attorneys/agents associated with Customer Number 25227" for the reason that the "application is being transferred to another attorney."

37 CFR 1.36(b) provides that

A registered patent attorney or patent agent who has been given a power of attorney pursuant to § 1.32(b) may withdraw as attorney or agent of record upon application to and approval by the Director. The applicant or patent owner will be notified of the withdrawal of the registered patent attorney or patent agent. Where power of attorney is given to the patent practitioners associated with a Customer Number, a request to delete all of the patent practitioners associated with the Customer Number may not be granted if an applicant has given power of attorney to the patent practitioners associated with the Customer Number in an application that has an Office action to which a reply is due, but insufficient time remains for the applicant to file a reply. See § 41.5 of this title for withdrawal during proceedings before the Board of Patent Appeals and Interferences.

While 37 CFR 10.40(b)(4) provides that

With regard to the Request For Withdrawal As Attorney Or Agent filed on 25 February 2005, counsel's attention is drawn respectfully to MPEP 402.06, which states in part that

In the event that a notice of withdrawal is filed by the attorney or agent of record, the file will be forwarded to the Technology Center Director where the application is assigned where appropriate procedure will be followed pertaining to the withdrawal. The withdrawal is effective when approved rather than when received.

Since the approval by the Director of the withdrawal was not given prior to the mailing of the Form PCT/DO/EO/922, that form was properly mailed to the pre-existing correspondence address of record.

With regard to the Transmittal of Power of Attorney, and attached Power of Attorney, Statement Under 37 CFR 3.73(b), Assignment and Recordation Form Cover Sheet filed by present counsel on 03 June 2005, inspection of the included "Assignment of Application" reveals that it does not specifically identify the application which is being assigned. Therefore, the 03 June 2005 submission did not properly establish the right of the assignee to take action in this case, and so the submission was not effective in changing the pre-existing correspondence address of record.

Since the Form PCT/DO/EO/922 was properly mailed to the correct correspondence of record, the petition to withdraw the holding of abandonment is DISMISSED, without prejudice.

Petition Under 37 CFR 1.137(b)

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed; (2) the petition fee as set forth in § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Regarding requirement (1), the required reply in this case is the reply required by the Form PCT/DO/EO/922 mailed on 01 July 2005 - specifically, a substitute computer readable form (CRF) of the sequence listing and a statement that the content of the CRF is identical to the written (on paper or compact disc) sequence listing and, where applicable, includes no new matter. Since applicants have not filed such a response, requirement (1) has not been met.

Regarding requirement (2), the petition fee is being charged to counsel's Deposit Account No. 03-2775, per the authorization in the petition.

Regarding requirement (3), petitioner states that "the total delay of the application up until the abandonment was unintentional." This is being construed as a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Petitioner must notify the Patent and Trademark Office if such an interpretation of the statement in the petition is not correct. Thus, the statement in the petition is being accepted in satisfaction of 37 CFR 1.137(b)(3).

Regarding requirement (4), no terminal disclaimer is required because the international filing date of this application is later than 8 June 1995.

DECISION

The petition to withdraw the holding of abandonment is **DISMISSED**, without prejudice.

The petition under 37 CFR 1.137(b) is **DISMISSED**, without prejudice.

Applicants have **TWO (2) MONTHS** from the mailing date of this decision to file a proper response. Extensions of time under 37 CFR 1.136(a) are available.

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the PCT Legal Office.


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